NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Allied Mechanical Services, Inc. and Plumbers and Pipefitters Local 357, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO. Cases 7-CA-40907 and 7-CA-41390

October 14, 2010

ORDER DENYING MOTION FOR RECONSIDERATION

BY CHAIRMAN LIEBMAN AND MEMBERS PEARCE AND HAYES

On September 28, 2007, the National Labor Relations Board, by a three-member panel, issued its Supplemental Decision and Order in this case. The Supplemental Decision and Order granted the General Counsel's and the Union's motions for reconsideration of the original Decision and Order² and overruled prior dismissals of allegations that the Respondent violated Section 8(a)(5) and (1) of the Act.³

On November 16, 2007, the Respondent filed a motion for reconsideration and a supporting brief. The General Counsel and the Union filed answering briefs.⁴

On May 30, 2008, the two sitting members of the Board issued an Order Denying Motion for Reconsideration in this proceeding, which is reported at 352 NLRB 662.⁵ In the order, they rejected the Respondent's contentions that the Board had erred in retroactively applying its decision in *Raymond F. Kravis Center for the Performing Arts*, 351 NLRB 143 (2007), in finding that the parties had a 9(a) relationship, and in ordering the Respondent to recognize and bargain with the Union. They also rejected the Respondent's contention that the case

should be remanded to the judge to apply the Board's decision in *Toering Electric Co.*, 351 NLRB 225 (2007).

Thereafter, the Respondent filed a petition for review in the United States Court of Appeals for the District of Columbia Circuit, 6 and the General Counsel filed a cross-application for enforcement. On June 17, 2010, the United States Supreme Court issued its decision in *New Process Steel, L.P. v. NLRB*, 130 S.Ct. 2635, holding that under Section 3(b) of the Act, in order to exercise the delegated authority of the Board, a delegee group of at least three members must be maintained. Thereafter, the court of appeals remanded this case for further proceedings consistent with the Supreme Court's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.⁷

Having considered the Respondent's motion for reconsideration and the parties' briefs, the Board has decided to deny the motion for reconsideration for the reasons set forth in the Order reported at 352 NLRB 662 (2008), which is incorporated herein by reference.

ORDER

It is ordered that the Respondent's motion for reconsideration is denied.

Dated, Washington, D.C. October 14, 2010

Wilma B. Liebman,	Chairman
Mark Gaston Pearce,	Member
Brian E. Hayes,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

¹ 351 NLRB 79.

² 341 NLRB 1084 (2004).

³ Specifically, the Board found that the Respondent violated Sec. 8(a)(5) and (1) by withdrawing recognition from Local 357 on July 22, 1998, by revising its job application procedure without notice to Local 357 on August 1, 1998, and by failing to provide a response to Local 357's July 29, 1998 information request.

⁴ The Respondent also filed a statement of additional authority.

⁵ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the powers of the National Labor Relations Board in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Thereafter, pursuant to this delegation, the two sitting members issued decisions and orders in unfair labor practice and representation cases.

⁶ The Respondent sought review of the Board's Decision and Order (341 NLRB 1084), Supplemental Decision and Order (351 NLRB 79), and Board Order denying the Respondent's motion for reconsideration (352 NLRB 662).

⁷ Consistent with the Board's general practice in cases remanded from the courts of appeals, and for reasons of administrative economy, the panel includes the remaining member who participated in the original decision. Furthermore, under the Board's standard procedures applicable to all cases assigned to a panel, the Board Members not assigned to the panel had the opportunity to participate in the adjudication of this case at any time up to the issuance of this decision. Member Becker is recused, and has taken no part in considering this case.